REMARKS

In the Office Action,[1] the Examiner took the following actions:

(1) rejected claims 7 and 14 under 35 U.S.C. § 112, second paragraph, as being indefinite;

(2) rejected claims 1-4 and 8-11 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,163,577 to Ekudden et al. ("*Ekudden*") in view of U.S. Patent No. 6,385,183 to Takeo ("*Takeo*") and U.S. Patent No. 6,782,429 to Kisor ("*Kisor*");

(3) rejected claims 5 and 12 under 35 U.S.C. § 103(a) as being unpatentable over *Ekudden* in view of *Takeo*, *Kisor*, and U.S. Publication No. 2004/0233903 to Samaras et al. ("*Samaras*"); and

(4) rejected claims 7 and 14 under 35 U.S.C. § 103(a) as being unpatentable over *Ekudden* in view of *Takeo*, *Kisor*, and U.S. Publication No. 2004/0004973 to Lee ("*Lee*").

Rejection of Claims 7 and 14 Under 35 U.S.C. § 112, Second Paragraph

Applicants respectfully traverse the rejection of claims 7 and 14 under 35 U.S.C. § 112, second paragraph, as being indefininte. However, to advance prosecution, Applicants amend claims 7 and 14 to address the Examiner's concerns. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of claims 7 and 14 under 35 U.S.C. § 112, second paragraph.

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[1] The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicants decline to automatically subscribe to any statement or characterization in the Office Action.

Rejection of Claims 1-4 and 8-11 Under 35 U.S.C. § 103(a)

Applicants respectfully traverse the rejection of claims 1-4 and 8-11 under 35 U.S.C. § 103(a) as being unpatentable over *Ekudden* in view of *Takeo* and *Kisor*. A *prima facie* case of obviousness has not been established.

"The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious." M.P.E.P. § 2142(III), 8th Ed., Rev. 6 (Sept. 2007). "[T]he framework for objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). . . . The factual inquiries . . . are as follows:

(A) [Determining the scope and content of the prior art;]

(B) Ascertaining the differences between the claimed invention and the prior art; and

(C) Resolving the level of ordinary skill in the pertinent art."

M.P.E.P. § 2141(II). "Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art." M.P.E.P. § 2141(III).

Independent claim 1 calls for a combination including, for example, "means for determining a rate at which the source data is to be transmitted, on the basis of the detected number of devices."

Applicants have previously established that *Ekudden* and *Kisor* fail to teach or suggest "determining a rate at which the source data is to be transmitted, on the basis of the detected number of devices," as recited in claim 1 (emphasis added). *See* Amendment, filed on November 20, 2007, pp. 8-9. The Examiner attempts to cure the

deficiencies of *Ekudden* and *Kisor* with *Takeo*, alleging that "Takeo . . . teaches . . . determining a quality with which the source data is to be transmitted on the basis of the detected number of devices." Office Action at 5. The Examiner's allegation is incorrect.

Takeo discloses that "powers at which . . . signals are transmitted from base stations are controlled so that the numbers of mobile stations . . . will be in a predetermined range." *Takeo*, abstract. However, *Takeo* discloses:

> a mobile-station transmission power TM and desired received-signal power TPR have the following relation.
>
> $$TPR = TM \cdot r^{-k}$$
>
> where "r" denotes the distance between a mobile station and a base station.

Id., col. 7, lines 9-15 (emphasis added). Accordingly, *Takeo* discloses controlling the power of transmitted signals based on the distance of mobile stations, not "on the basis of the . . . number of devices," as recited in claim 1. Furthermore, *Takeo* repeatedly refers to "distance-dependent power." *See, e.g., id.*, col. 9, lines 30, 32, 36, and 37; col. 20, lines 10, 12, 16, and 18. Additionally, Figs. 1, 4, 5, 15, and 16 of *Takeo* are diagrams depicting relationships between power and distance between mobile stations and a base station. Therefore, *Takeo* fails to teach or suggest "means for determining a rate at which the source data is to be transmitted, on the basis of the detected number of devices," as recited in claim 1 (emphasis added). *Takeo* thus fails to cure the deficiencies of *Ekudden* and *Kisor*.

Moreover, even if *Takeo* were to disclose controlling the power of transmitted signal based on the number of mobile stations, which *Takeo* does not, the power control technique disclosed in *Takeo* is used to make the number of mobile stations managed

by a base station fall within an appropriate range. Therefore, in *Takeo*, when a small number of mobile stations are managed by a base station, the power of a signal can be increased in order to increase the number of managed mobile stations.

Contrarily, claim 1 recites "when the detected number is greater than a preset value, the rate is determined lower than when the detected number is not greater than the preset value." (Emphases added.) Therefore, consistent with the claimed invention, to prevent the traffic of the wireless network from increasing, the rate of transmission of source data is set lower when a large number of devices are connected to the wireless communication device. In other words, while claim 1 calls for a lower rate for a greater number of devices, *Takeo* discloses higher signal power for a greater number of mobile stations. Therefore, *Takeo* fails to teach or suggest "when the detected number is greater than a preset value, the rate is determined lower than when the detected number is not greater than the preset value," as recited in claim 1.

For at least the foregoing reasons, the scope and content of the prior art have not been properly determined, and the differences between the prior art and claim 1 have not been properly ascertained. Accordingly, no reason has been clearly articulated as to why the prior art would have rendered claim 1 obvious to one of ordinary skill in the art. Therefore, a *prima facie* case of obviousness has not been established with respect to claim 1.

Independent claim 8, although different in scope from claim 1, is allowable for at least reasons similar to those given for claim 1. Furthermore, dependent claims 2-4 and 9-11 are allowable at least due to their dependence from allowable base claim 1 or 8.

Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejection of claims 1-4 and 8-11 under 35 U.S.C. § 103(a).

Rejection of Claims 5, 7, 12, and 14 Under 35 U.S.C. § 103(a)

Applicants respectfully traverse the rejection of claims 5 and 12 under 35 U.S.C. § 103(a) as being unpatentable over *Ekudden* in view of *Takeo*, *Kisor*, and *Samaras*; and the rejection of claims 7 and 14 under 35 U.S.C. § 103(a) as being unpatentable over *Ekudden* in view of *Takeo*, *Kisor*, and *Lee*. A *prima facie* case of obviousness has not been established.

Claims 5 and 17 depend from claim 1, and claims 12 and 14 depend from claim 8. As discussed above, *Ekudden*, *Takeo*, and *Kisor* fail to teach or suggest all the elements of claims 1 and 8. Regardless of whether the Examiner's characterizations of *Samaras* and *Lee* in the Office Action are correct, which they are not, *Samaras* and *Lee* fail to cure the deficiencies of *Ekudden*, *Takeo*, and *Kisor*. That is, *Samaras* and *Lee* also fail to teach or suggest "determining a rate at which the source data is to be transmitted, on the basis of the detected number of devices and a type of the source data, wherein when the detected number is greater than a preset value, the rate is determined lower than when the detected number is not greater than the preset value," as recited in claim 1 and required by claims 5 and 7, and similarly recited in claim 8 and required by claims 12 and 14. Therefore, a *prima facie* case of obviousness has not been established with respect to claims 5, 7, 12, and 14. Accordingly, Applicants respectfully request the Examiner to reconsider and withdraw the rejections of claims 5, 7, 12, and 14 under 35 U.S.C. § 103(a).

Conclusion

In view of the foregoing, Applicants request reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: May 9, 2008

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